

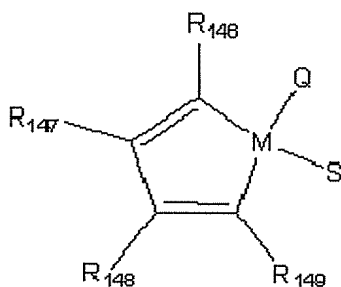
### Remarks

Claims 1-41, 61, 63, 65 and 67 are pending in the application. Claim 41 has been withdrawn from consideration as being directed to a non-elected claim. The Decision On Appeal dated January 15, 2008 reversed the final rejection of claims 4-7, 10, 12-14, 17-23, 28-30, 32, 35-40, 61, 63, 65, and 67 under 35 U.S.C. §102(b) and asserted a new rejection of claims 1-3, 8, 9, 15, 16, 24-27, 31, 33, and 34 under 35 U.S.C. §102(b) based upon assertions provided therein as to the teachings of the previously cited Arthur reference.

Accordingly, the subject of this request to reopen prosecution, is directed to the new grounds of rejection of claims 1-3, 8, 9, 15, 16, 24-27, 31, 33, and 34 over Arthur.

### Arguments

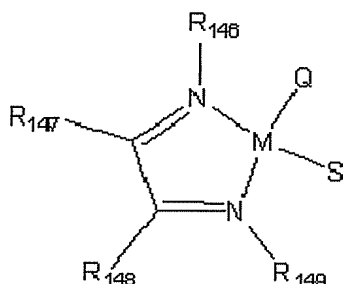
In the new grounds of rejection, the decision by two of the judges relies on compounds (XXXXI) of Arthur, having the formula:



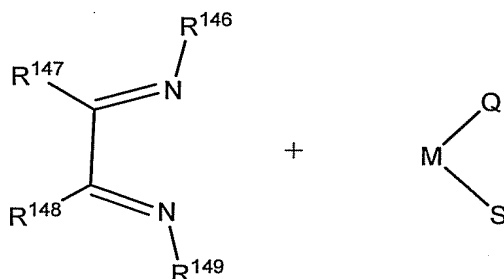
stating that these compounds contain monodentate ligands Q and S. The decision further states that specific embodiments of such ligands are Q=S=Br and Q=S=2-ethylhexanoate. In these examples, M is nickel and the chain transfer agent is H<sub>2</sub>.

Appellants respectfully traverse this new grounds of rejection as the structure of compounds XXXXI provided in column 11 and the description thereof provided immediately below at lines 17-21 are inconsistent. In particular, this description states that "R<sup>146</sup> and R<sup>149</sup> are each independently hydrocarbyl or substituted hydrocarbyl, provided that the carbon atom bound to the **imino nitrogen atom** has at least two carbon atoms bound to

it” (emphasis added). Therefore, compound XXXXI should be represented by the following formula:



which is the result of the interaction of bidentate ligand IV (see, Arthur, top of column 2) and an appropriate M(Q)(S) as shown below:



Additionally, the Examiner’s attention is directed to Example 1, which shows structure XXXXII consistent with what Appellant asserts is the correct structure of compound XXXXI where both Q and S are both a Br atom covalently bonded to a Ni atom and are NOT monodentate ligands as suggested by the majority of the Board of Appeals. As stated above, an affidavit filed under 37 C.F.R. §1.132 will be submitted to support Appellant’s assertions.

Accordingly, it is respectfully requested that the rejection of claims 1-3, 8, 9, 15, 16, 24-27, 31, 33, and 34 under 35 U.S.C. 102(b) be withdrawn as compound XXXXI of Arthur, which the Board of Appeals has based the new grounds of rejection, is incorrect and rather than teaching a monodentate ligand, teaches a metal catalyst formed from a bidentate ligand consistent with ligand IV as opposed to the claimed monodentate ligand.

Furthermore, as pointed out by Administrative Patent Judge, Peter F. Krantz, in his dissenting opinion of the Decision on Appeal, the majority did not establish, *prima*

*facie*, how selection of a species of compound Formula XXXXI of Arthur, which appears to be a metal complex formula used by Arthur for forming an active polymerization catalyst in situ, coupled with the ethylene polymerization Examples 1 and 2, the possible selection of other cyclic monomers and, finally the selection of a chain transfer agent from among those disclosed by Arthur amounts to an anticipating disclosure of Appellants' method claim and the other rejected claims. Aside from the necessary selections, the majority does not even address how the referred to portions of the disclosure of Arthur describe both the mixture formation combining step and the separate catalyst addition step of claim 1, which the latter step causes the mixture formed in the combining step to polymerize.

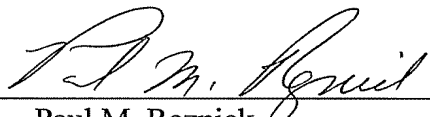
For the reasons set forth above, it is respectfully requested that the rejection of claims 1-3, 8, 9, 15, 16, 24-27, 31, 33, and 34 under 35 U.S.C. §102(b) be withdrawn as Arthur fails to anticipate these claims.

**Conclusion**

Based on the foregoing remarks, reconsideration of the rejection and allowance of claims 1-3, 8, 9, 15, 16, 24-27, 31, 33, and 34 are requested.

Additionally, Appellants' representative is requesting that a personal interview be granted should the Examiner have any questions regarding this request for reopening prosecution and/or should such request not result in allowance of all claims currently pending in the application.

Respectfully submitted,  
THE WEBB LAW FIRM

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